

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

POLSKIE LINIE LOTNICZE LOT S.A.,

Plaintiff,

vs.

THE BOEING COMPANY,

Defendant.

Case No. 2:21-CV-01449-RSM

STIPULATED MOTION AND ORDER
FOR LEAVE TO FILE LOT'S
OPPOSITION TO BOEING'S MOTION TO
DISMISS UNDER SEAL

NOTE ON MOTION CALENDAR:
JANUARY 12, 2023

INTRODUCTION

Pursuant to Local Civil Rule 5(g)(2), Plaintiff Polskie Linie Lotnicze LOT S.A. ("LOT") and Defendant The Boeing Company ("Boeing," and together with LOT, the "Parties") respectfully move this Court for leave to file LOT's Opposition to Boeing's Motion to Dismiss LOT's First Amended Complaint ("Opposition") under seal because it references portions of Boeing's Motion to Dismiss and LOT's First Amended Complaint that are already under seal and contains other excerpts from, and summaries of, confidential documents containing sensitive contractual terms, the full disclosure of which will result in harm to Boeing's and its airline customers' (which includes LOT) commercial interests.

1 **RELEVANT PROCEDURAL HISTORY**

2 The Court previously allowed the Parties to file LOT's First Amended Complaint and
 3 Boeing's Motion to Dismiss LOT's First Amended Complaint, both of which also quoted and
 4 summarized portions of the AGTA, under seal initially, with the Parties proposed limited redactions
 5 a week later. *See* ECF No. 48 (order granting joint request to seal limited to those portions referring
 6 to the AGTA terms in the First Amended Complaint); ECF No. 52 (same for Boeing's Motion to
 7 Dismiss LOT's First Amended Complaint).

8 **LCR 5(g)(3)(A) CERTIFICATION**

9 The Parties have met and conferred and agree about the need for sealing. In accordance
 10 with Local Civil Rule 5(g)(3)(A), the undersigned counsel certify that on January 10, 2023, the
 11 Parties communicated about LOT's intention to include in its Opposition, to be filed on January
 12 12, 2023, excerpts to and references from Boeing's Aircraft General Terms Agreements
 13 ("AGTAs") with airline lessors that leased aircraft to LOT (and assigned some contractual AGTA
 14 terms to LOT during the course of those lease agreements) and references to portions of Boeing's
 15 Motion to Dismiss and LOT's First Amended Complaint that are already under seal.

16 The Parties therefore agree that LOT's Opposition will be filed under seal in the first
 17 instance, subject to this Court's approval. The Parties further agreed that, following LOT's filing
 18 of the Opposition under seal, as well as this accompanying Stipulation Motion and [Proposed]
 19 Order: (1) the Parties would meet and confer to agree on appropriate redactions to the Opposition;
 20 and, subject to the Court granting this Stipulated Motion, (2) LOT would file a redacted copy of
 21 its Opposition on the public docket within seven (7) days of filing its Opposition.

22 The Parties are in further agreement that there is not another means of protecting the
 23 commercially sensitive information in the AGTAs.

24 **LCR 5(g)(3)(B) LEGAL STANDARD AND ARGUMENT**

25 This Court applies a strong presumption favoring public access to court records that
 26 ordinarily requires the moving party to provide compelling reasons to seal a document.

1 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). But where the
2 underlying motion is non-dispositive, the showing required to rebut the presumption is far lower.
3 *See, e.g., In re Midland Nat'l Life Ins. Co. Annuity Sales Practices Litig.*, 686 F.3d 1115, 1119
4 (9th Cir. 2012) (holding that where the sealed records are “attached to a non-dispositive motion .
5 . . . , the usual presumption of the public’s right of access is rebutted” (internal quotation marks
6 and citation omitted)); *Kamakana*, 447 F.3d at 1179 (“The public policies that support the right
7 of access to dispositive motions, and related materials, do not apply with equal force to non-
8 dispositive materials.”).

9 In the case of a non-dispositive motion, a “good cause” showing will suffice to seal any
10 records attached to the motion. *Id.* at 1180; *see also Midland*, 686 F.3d at 1119 (“[A]
11 particularized showing of ‘good cause’ under Federal Rule of Civil Procedure 26(c) is sufficient
12 to preserve the secrecy of sealed discovery documents attached to non-dispositive motions.”
13 (citation omitted)). Here, Boeing’s Motion to Dismiss is not a dispositive motion; it is a motion
14 to dismiss only some of the causes of the action. Therefore, the Court need only find good cause
15 exists to redact portions of LOT’s Opposition to Boeing’s Motion to Dismiss that address
16 confidential contractual terms.

17 Boeing and LOT agree that the AGTAs set out the contractual terms on which Boeing
18 sells commercial aircraft to its customers, including the terms of delivery, pricing, rebates, and
19 product warranties. Boeing does not publicly disclose information of this kind. It is particularly
20 sensitive because contracts between Boeing and its customers are heavily negotiated and subject
21 to confidential terms and conditions. Boeing and its customers negotiate those contracts with the
22 understanding that those commercial terms will not be disclosed to the public, thereby resulting
23 in competitive harm both to Boeing and to its customers. For precisely this reason, the AGTAs
24 contain provisions requiring the parties to treat as strictly confidential any information pertaining
25 to the AGTAs, including the documents as well as individual provisions contained therein.
26 Similarly, when airline customers lease Boeing aircraft (versus purchasing them outright), the

1 airline customer, such as LOT here, will execute assignments of certain rights under the lessor's
2 AGTA, and the confidentiality provisions of the AGTAs are one such right assigned.

3 This Court has already granted Boeing leave to file under seal its Motion to Dismiss,
4 which quotes and summarizes many of the same portions of the AGTAs that LOT does in its
5 Opposition, for the same reasons as stated in this Stipulated Motion. *See* ECF No. 52. Other
6 courts have consistently permitted parties to redact similar contractual information on the grounds
7 that it is commercially and competitively sensitive. *See, e.g., KM Enters., Inc. v. Glob. Traffic*
8 *Techs., Inc.*, 725 F.3d 718, 734 (7th Cir. 2013) (sealing “customer and pricing data”); *Apple Inc.*
9 *v. Samsung Elecs. Co.*, 727 F.3d 1214, 1223 (Fed. Cir. 2013) (redacting “product-specific
10 financial information”); *Amgen Inc. v. Amneal Pharms. LLC*, 2021 WL 4843959, at *2 (D. Del.
11 Oct. 18, 2021) (sealing “contract price at which [manufacturer] sells the . . . product to each
12 customer” and the “chargebacks, rebates, and discounts provided to each customer”). As Judge
13 Posner reasoned, information of this type gives “unearned competitive advantage” to other firms,
14 and “the American public does not need to know [such information] in order to evaluate the
15 handling of this litigation by the judiciary.” *SmithKline Beecham Corp. v. Pentech Pharms., Inc.*,
16 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003).

17 Disclosure of the contractual terms of AGTAs would result in harm to Boeing and its
18 customers. If another aircraft manufacturer learns of these terms, Boeing would be unfairly
19 disadvantaged because the competitor could craft its offers with full knowledge of the package
20 of pricing, services, and other terms that Boeing offers its customers. The result would be that
21 the competitor could craft its own proposals with unilateral insight into Boeing's confidential
22 contracts. That unfair advantage would arise by virtue of the litigation process, not through any
23 earned business advantage. Likewise, such disclosure would also give other airline customers
24 (or aircraft lessees) access to confidential pricing, services, and other contract terms that Boeing
25 offers to the counterparties to the AGTAs at issue in this case, which would create unearned
26 leverage in negotiations with Boeing arising by virtue of a routine filing in a litigation unrelated

1 to those business entities, rather than through any earned competitive advantage.

2 Finally, the Parties do not propose keeping the entirety of the Opposition under seal. *See*
 3 LCR 5(g)(3)(B)(iii) (requiring the least restrictive method to ensure protection of material to be
 4 sealed). Instead, the Parties anticipate being able to redact only those portions that quote from or
 5 specifically detail terms from the AGTAs. As soon as the Opposition is filed, and available to
 6 Boeing for review, the Parties will work together to prepare such a redacted version for filing in
 7 the public record.

8 CONCLUSION

9 For the foregoing reasons, the Parties respectfully request that this Court order the following
 10 document be filed under seal: an unredacted copy of LOT's Opposition to Boeing's Motion to
 11 Dismiss LOT's First Amended Complaint. The Parties will submit a redacted copy for filing in the
 12 public record within seven (7) days of the Court's order sealing this Opposition.

13 IT IS SO STIPULATED by and between the Parties.

14 DATED: January 12, 2023

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7 **ORDER**

8 Based upon the foregoing Stipulation, the Court hereby:

9 ORDERS, ADJUDGES AND DECREES that the unredacted copy of LOT's
10 Opposition to Boeing's Motion to Dismiss LOT's First Amended Complaint may
11 be filed under seal.

12 IT IS SO ORDERED.

13 DATED this 13th day of January, 2023.

14 

15 RICARDO S. MARTINEZ
16 UNITED STATES DISTRICT JUDGE
17
18
19

20 Presented by:

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